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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/707,472	12/16/2003	Keith Giacchino	plastic	1471
23217	7590	08/17/2005	EXAMINER	
GLENN L. WEBB			MILLS, DANIEL J	
P.O BOX 951				
CONIFER, CO 80433			ART UNIT	PAPER NUMBER
			3679	

DATE MAILED: 08/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>
	10/707,472	GIACCHINO, KEITH
Examiner	Daniel J. Mills	Art Unit 3679

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

1)  Responsive to communication(s) filed on 17 June 2005.

2a)  This action is **FINAL**.                    2b)  This action is non-final.

3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## **Disposition of Claims**

4)  Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) 10-28 is/are withdrawn from consideration.  
5)  Claim(s) \_\_\_\_\_ is/are allowed.  
6)  Claim(s) 1-9 is/are rejected.  
7)  Claim(s) \_\_\_\_\_ is/are objected to.  
8)  Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

9)  The specification is objected to by the Examiner.

10)  The drawing(s) filed on 16 December 2003 is/are: a)  accepted or b)  objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a)  All    b)  Some \* c)  None of:  
1.  Certified copies of the priority documents have been received.  
2.  Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3.  Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

1)  Notice of References Cited (PTO-892)  
2)  Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3)  Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_

4)  Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_  
5)  Notice of Informal Patent Application (PTO-152)  
6)  Other: \_\_\_\_\_

### **DETAILED ACTION**

Claims 10-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 6/17/2005.

#### *Drawings*

The drawings are objected to because: improper crosshatching is used in figure 2 see MPEP 608.02; It is unclear what numerals 10, 16, 12, 14, 100 are indicating; Indicator lines should be solid. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required

corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1-9 are rejected under 35 U.S.C. 102(b) as being anticipated by Patrick (US 5,657,967).

Regarding claim 1, Patrick discloses a building material component (40), said building material component comprising an extruded component, a textured surface (shown in figure 9) formed on said component, and colored streaks extending through said textured surface (slight colored streaking throughout is inherent in extruded plastic materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58).

Regarding claim 2, Patrick discloses a building material component wherein said extruded component is made from ultraviolet stabilized polyethylene (Column 2 lines 55-65).

Regarding claim 3, Patrick discloses a building material component (40) wherein said textured surface (shown in figure 9) is created from injecting an agent having a melt temperature different than that of the base material of the component during the

extrusion process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting an agent having a melt temperature different than that of the base material of the component during the extrusion process" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 4, Patrick discloses a building material component (40) wherein said textured surface (shown in figure 9) is created from injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "injecting a blowing agent having a melt temperature different than that of the base material of the component during the thermoforming process" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 5, Patrick discloses a building material component (40) wherein said colored streaks (slight colored streaking throughout is inherent in extruded plastic materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58) are created by adding one or more coloring agents having different melt temperatures. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having different melt temperatures" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 6, Patrick discloses a building material component (40) wherein said colored streaks (slight colored streaking throughout is inherent in extruded plastic

materials due to material and mixing variations, and in fact is very difficult to eliminate, particularly when virgin material is not used. see column 2 lines 55-58) are created by adding one or more coloring agents having differing viscosities. The specific method of forming is not germane to the issue of patentability of the device itself. Therefore, the limitation "adding one or more coloring agents having differing viscosities" has been given only limited patentable weight. See MPEP § 2113.

Regarding claim 7, Patrick discloses a building material component (40) wherein said building material component is used to create a fencing section (10 see figure 1; column 2 lines 41-45).

Regarding claim 8, Patrick discloses a building material component (40) used to create a fencing section (10), wherein fencing section further includes at least one post (12), at least two rails (16, 18) attached to said post, and fasteners (34) for attaching said building material component to said at least two rails.

Regarding claim 9, Patrick discloses a building material component (40) used to create a fencing section (10), wherein fencing section further includes at least one post (12), at least two rails (16, 18) attached to said post, and fasteners (34) for attaching said building material component to said at least two rails and at least one cap (upper and lower flanges 22 and 24) for attachment onto said at least one rail.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Dorchester et al. (US 5,869,176; US 5,866,639; US 5,866,054),

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Zanavich et al. (US 4,540,160), Johnson (US 5,953,878), McGarry et al. (US 6,311,955), Ohanesian (US 6,719,277), DeSouza (US 5,938,184) are cited for pertaining to plastic fence design.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Daniel J. Mills whose telephone number is 571-272-8115. The examiner can normally be reached on M-F 8:30-5:00.

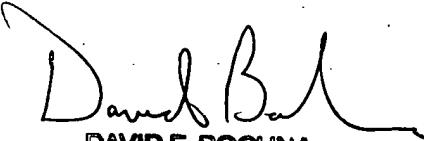
If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Daniel P. Stodola can be reached on 571-272-7087. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

DJM

DJM

8/4/2005

  
DAVID E. BOCHNA  
PRIMARY EXAMINER